

**Public Chapter 217**

**SENATE BILL NO. 504**

**By Henry**

Substituted for: House Bill No. 868

By Kisber

AN ACT To amend Tennessee Code Annotated, Section 6-56-110; Section 8-5-110; Section 9-4-103; Section 9-4-107; Section 9-4-703, and Title 9, Chapter 4, Parts 5 and 6, relative to public funds.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-56-110, is amended by deleting the word and figure "part 5" and by substituting instead the words and figures "parts 1 and 4, or as provided in the collateral pool created under title 9, chapter 4, part 5".

SECTION 2. Tennessee Code Annotated, Section 8-5-110, is amended by deleting subsection (a) thereof in its entirety and by substituting instead the following:

(a) The State Treasurer is designated as the custodian of all negotiable instruments deposited as collateral with the state or any department thereof, and shall be exclusively responsible for their safekeeping.

SECTION 3. Tennessee Code Annotated, Section 9-4-103(10)(C), is amended by inserting immediately before the semicolon (";") at the end thereof the words and figures "or to secure funds covered by the collateral pool created under title 9, chapter 4, part 5".

SECTION 4. Tennessee Code Annotated, Section 9-4-508, is amended by adding the following new subdivision at the end thereof:

(8) The board may purchase insurance from insurers licensed to do business in this state for the purpose of providing coverage against loss caused by the default or insolvency of qualified public depositories. Any loss may be satisfied from said insurance prior to the assessment against qualified public depositories as provided in § 9-4-512(3).

SECTION 5. Tennessee Code Annotated, Section 9-4-518, is amended by deleting subsection (b) in its entirety and by redesignating the existing subsections accordingly; and by further amending the current subsection (c) by deleting the words "reports required in subsections (a) and (b)" and by substituting instead the words "report required in subsection (a)".

SECTION 6. Tennessee Code Annotated, Section 9-4-519(a), is amended by deleting it in its entirety and by substituting instead the following:

(a) Public depositors shall comply with the following requirements:

(1) A public depositor shall ensure that the name of the public depositor is on the account or certificate provided to the public depositor by the qualified public depository in a manner sufficient to disclose the identity of the public depositor; and

(2) A public depositor who sustained a loss occasioned by a default or insolvency of a qualified public depository that was not satisfied pursuant to § 9-4-512 shall notify the treasurer of that fact within three (3) business days after receiving actual notice of the default from publications made pursuant to § 9-4-513(a).

SECTION 7. Tennessee Code Annotated, Section 9-4-508, is amended by adding the following new subdivision (4) and by redesignating the existing subdivisions accordingly:

(4) The board may establish a process by which to determine, to the greatest extent practicable, that a qualified public depository is securing all its public deposits through the collateral pool.

SECTION 8. Tennessee Code Annotated, Section 9-4-521(a), is amended by deleting from the second sentence thereof the word and figure "eleven (11)" and by substituting instead the word and figure "twelve (12)"; by deleting subdivision (5) in its entirety and by substituting instead the following:

(5) Two (2) members must be county trustees; and

SECTION 9. Tennessee Code Annotated, Section 9-4-521(b), is amended by deleting the last sentence thereof in its entirety and by substituting instead the following:

The members referred to in subdivision (a)(5) shall be appointed from a list of five (5) nominees submitted by the Tennessee County Officials Association. The nominees selected by the league and the associations shall have at least two (2) years experience in the field of finance.

SECTION 10. Tennessee Code Annotated, Section 9-4-521(c), is amended by deleting it in its entirety and by substituting instead the following:

(c) The task force shall elect, from among the six (6) members referred to in subdivisions (a)(3) - (5), one (1) representative to serve as a member of the collateral pool board.

SECTION 11. Tennessee Code Annotated, Section 9-4-521(d), is amended by adding the following at the end thereof:

The State Treasurer and the Comptroller of the Treasury may designate members of their respective staffs to attend meetings of the task force and to exercise their right to vote in their absence.

SECTION 12. Tennessee Code Annotated, Section 9-4-703, is amended by deleting the words and figures "Tennessee advisory commission on intergovernmental

relations created by title 4, chapter 10" and by substituting instead the words and figures "State Funding Board created by § 9-9-101".

SECTION 13. Tennessee Code Annotated, Title 9, Chapter 4, Part 6, is amended by adding the following new section:

9-4-6\_\_\_\_. Intermediate-term investment fund.

(a) The State Funding Board shall determine whether a need exists for a longer-term investment fund for funds in the custody of the State Treasurer. Upon determining that such a need exists, the State Funding Board may, by resolution duly adopted, create an intermediate-term investment fund as an additional investment vehicle for money in the custody of any department or agency of the state which is required by court order, contract, state or federal law or federal regulation to receive interest on invested funds. The funding board shall establish the terms of participation in the fund, and shall set the minimum and maximum amounts which may be invested in the fund by each participant. The investment fund shall be administered by the State Treasurer within the guidelines established by the funding board.

(b) The portfolio of the intermediate-term investment fund shall contain only those investment instruments set forth in § 9-4-602.

(c) Any department or agency of the state which is required by court order, contract, state or federal law or federal regulation to receive interest on invested funds may apply with the State Treasurer to participate in the fund. Upon approval of any such application and upon investment of cash in the fund, the respective department or agency shall be deemed a participant in the fund. The general fund of the state may also participate in the fund. A participant may invest its cash for any length of time in the fund; provided that the funding board may establish restrictions for withdrawal and/or penalties for early withdrawal.

(d) All securities purchased shall belong jointly to the participants in the fund and the participants will share capital gains, income, and losses pro rata.

(e) The State Treasurer shall keep a separate account, designated by name and number of each participant. Individual transactions and totals of all investments belonging to each participant shall be recorded in the accounts.

(f) The State Treasurer shall report monthly to every participant having a beneficial interest in the intermediate-term investment fund. The report shall show the changes in investments made during the preceding month.

(g) The State Treasurer shall establish a revolving account, under the treasurer's custody, to defray administrative costs of the investment fund. The State Treasurer shall deduct from each participant's pro rata earnings through the fund a reasonable charge for administering the fund, which shall be deposited and expended through the revolving account.

SECTION 14. Tennessee Code Annotated, Section 9-4-103(9), is amended by deleting it in its entirety and by substituting instead the following:

(9) An irrevocable letter of credit issued by the federal home loan bank; provided, that:

(A) The federal home loan bank is rated in the highest category by at least two (2) nationally recognized securities rating services; and

(B) The State Treasurer may require the state depository to promptly pledge securities in lieu of the letter of credit if the State Treasurer believes it necessary to protect public funds; or

SECTION 15. Tennessee Code Annotated, Section 9-4-107, is amended by deleting it in its entirety and by substituting instead the following:

(a) "State depository" means:

(1) (A) Any savings and loan association, or savings bank (collectively referred to as savings institutions), or any bank chartered by the State of Tennessee;

(B) Any national bank, or federal savings institution that has its main office located in this state; or

(C) Any national or state bank, or any federal or state savings institution that has its main office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits; and

(2) That has been designated by the State Treasurer, the Governor and the Commissioner of Finance and Administration as a state depository. Notwithstanding any other provision of the law to the contrary, an automated teller machine or such other similar type receptacle or device shall not be considered a branch for purposes of this section. A bank or savings institution located outside this state desiring to be designated as state depository must agree that this chapter shall govern in determining its rights and responsibilities as a state depository, and must agree to be subject to the jurisdiction of the courts of this state, or of the courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter.

(b) Notwithstanding any provision of § 12-4-108 to the contrary, the public official described in § 12-4-108(b) shall have the power to enter into a trust agreement with any savings institution or bank described in subsection (a) of this section for the safekeeping, custodial care and servicing of securities substituted for retained funds pursuant to § 12-4-108.

(c) It is the duty of the Commissioner of Financial Institutions to make inquiry, on a timely basis, of the primary regulatory authority respecting the condition and safety of each out-of-state state chartered bank and of each out-of-state state chartered savings institution as a state depository and to advise the State Treasurer and the Commissioner of Finance and Administration of the results. Such inquiry shall be made on at least an annual basis.

SECTION 16. Tennessee Code Annotated, Section 9-4-502(17), is amended by deleting it in its entirety and by substituting instead the following:

(17) "Public depository" means:

(A) (i) Any savings and loan association, or savings bank (collectively referred to as savings institutions), or any bank chartered by the State of Tennessee;

(ii) Any national bank or federal savings institution that has its main office located in this state; or

(iii) Any national or state bank, or any federal or state savings institution that has its main office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits; and

(B) which has been appropriately designated to hold public deposits by a public depository. Notwithstanding any other provision of the law to the contrary, an automated teller machine or such other similar type receptacle or device shall not be considered a branch for purposes of this subsection. A bank or savings institution located outside this state desiring to be designated as qualified public depository must agree that this chapter shall govern in determining its rights and responsibilities as a qualified public depository, and must agree to be subject to the jurisdiction of the courts of this state, or of the courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter.

SECTION 17. Tennessee Code Annotated, Section 9-4-512, is amended by deleting it in its entirety and by substituting instead the following:

9-4-512. When the Treasurer determines that a default or insolvency has occurred, the Treasurer shall provide notice as required in § 9-4-513 and implement the following procedures:

(1) The Treasurer, in cooperation with the Commissioner of Financial Institutions, the appropriate federal regulator, or the conservator or receiver of the qualified public depository in default, shall ascertain the amount of funds of each public depository on deposit at such depository, the amount of deposit insurance applicable to such deposits and the amount of such deposits which will not be covered through the sale of securities pledged by the defaulting depository;

(2) Upon ascertaining the amount of such deposits which will not be covered through any applicable deposit insurance or through the sale of securities pledged by the defaulting depository, the Treasurer shall as promptly as possible provide coverage of the remaining loss by assessment against the other qualified public depositories. Such assessment shall be determined by multiplying the total amount of the loss to all public depositories by a percentage which represents the average share of public fund deposits held by that depository during the previous twelve (12) months divided by the average total public deposits

held by all depositories during the same twelve-month period, excluding the public deposits of the defaulting depository;

(3) Each qualified public depository shall pay its assessment to the Treasurer within five (5) business days after it receives notice of the assessment. If a depository fails to pay its assessment when due, the Treasurer shall satisfy the assessment by selling securities pledged by that depository; and

(4) Public depositories receiving payment under the provisions of this section shall assign to the Treasurer any interest they may have in funds that may subsequently be made available to the qualified public depository in default. If the qualified public depository in default or its receiver provides the funds to the Treasurer, the Treasurer shall distribute the funds, plus all accrued interest which has accumulated from the investment of the funds, if any, to the depositories which paid assessments on the same pro rata basis as the assessments were paid.

SECTION 18. Tennessee Code Annotated, Section 9-4-513, is amended by deleting it in its entirety and by substituting instead the following:

(a) Within thirty (30) days after the date of default or insolvency of a qualified public depository, the Treasurer shall publish or cause to be published notice of such default or insolvency once a week for two (2) consecutive weeks in a newspaper of general circulation in each grand division of the state and in the Tennessee Administrative Register. The notice shall direct all public depositories who sustained a loss occasioned by the default or insolvency that was not satisfied pursuant to § 9-4-512 to file their claims with the Treasurer within ninety (90) days after the date of the first publication of the notice.

(b) No claim made pursuant to subsection (a) shall be binding on the pool or the qualified public depositories unless presented within ninety (90) days after the date of the first publication of the notice. Further, no such claim shall be binding on the pool or the qualified public depositories if the loss was occasioned by the public depositor's failure to comply with the requirements of § 9-4-519(a)(1). This subsection does not affect any proceeding to:

(1) Enforce any real property mortgage, chattel mortgage, security interest, or other lien on property of a qualified public depository that is in default or insolvency; or

(2) Establish liability of a qualified public depository that is in default or insolvency to the limits of any federal or other casualty insurance protection.

SECTION 19. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 20. This act shall take effect upon becoming a law, the public welfare requiring it.